

MT LEGISLATIVE HISTORY

Chapter 371 1981

Bill (H) 596 S _____

Original bill & hist. ✓ C

H. Committee on Select Committee on Water S. Committee on Agriculture

Hearing Date(s) Feb 12 ✓ C

Hearing Date(s) Mar 11 ✓ C

_____ C

Mar 13 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out 5/12 ✓ C

Mar 13 ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____

Report _____

HOUSE BILL NO. 596

INTRODUCED BY WILLIAMS, ASAY, McLANE, ROTH, BURNETT,
ZABROCKI, BENGTON, ELLISON, CONROY, DONALDSON, GOULD,
CURTISS, THOFT, SIVERTSEN, NEUMAN

IN THE HOUSE

January 31, 1981	Introduced and referred to Committee on Water.
February 18, 1981	Committee recommend bill do pass. Report adopted.
February 19, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 23, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 98; Noes, 0. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 14, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1981	Motion pass consideration.
March 17, 1981	On motion, consideration be passed for the day.
March 18, 1981	Second reading, concurred in as amended.
March 20, 1981	Third reading, concurred in as amended. Ayes, 46; Noes, 2.

IN THE HOUSE

March 21, 1981

Returned from Senate with amendments.

April 7, 1981

Second reading, amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in. Ayes, 96; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 596

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECOGNIZE A

SECONDARY EASEMENT FOR ENTRY TO AND MAINTENANCE OF A CANAL;
 TO PROHIBIT ENCROACHMENTS UPON OR IMPAIRMENT OF EASEMENTS
 FOR CANALS OR DITCHES USED FOR IRRIGATION OR ANY OTHER
 LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, INCLUDING CARRYING
 RETURN WATER; AND TO PROVIDE FOR THE PAYMENT OF COSTS AND
 ATTORNEY'S FEES TO THE PREVAILING PARTY IN ACTIONS UNDER
 THIS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Interference with canal or ditch easements
 prohibited. (1) A person with a canal or ditch easement has
 a secondary easement to enter and inspect, repair, maintain,
 or otherwise use the easement.

(2) No person may encroach upon or otherwise impair
 any easement for a canal or ditch used for irrigation or any
 other lawful domestic or commercial purpose, including
 carrying return water, or any secondary easement necessary
 for entry to inspect, repair, maintain, or otherwise use the
 canal or ditch easement.

(3) The provisions of subsection (2) do not apply if
 the holder of the canal or ditch easement consents in

writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by
 prescription or conveyance is included within the scope of
 this section.

(5) If a legal action is brought to enforce the
 provisions of this section, the prevailing party is entitled
 to costs and reasonable attorney's fees.

-End-

INTRODUCED BILL

-2-

HB 596

MR. LENHARDT explained that it took a 1969 court judgement to obtain a secondary easement. He went on to tell of various cases of people obstructing the ditches and the problems involved.

The hearing closed and the committee went into Executive Session.

EXECUTIVE SESSION

HB 596

REP. TOM CONROY made a motion to DO PASS on HOUSE BILL 596.

REP. KEMMIS expressed some reservations regarding this bill. In certain cases where urban sprawl has encroached on ditch easements, a property owner may have to go to court to protect ditch rights and secondary easement rights. He felt it unfair to have to go to court repeatedly. The rest of the bill states in very specific terms what the case law already provides in much fuller terms. There just is no doubt, he said, that the case law is just as valid as this statute; and, in a statute like this, there may be a narrowing of those rights. The words used are all the rights will be provided. The court will consider the statute to be controlling and anything not named as a right will no longer be allowed, he said. He also agreed with the provision that pays attorney fees. He said he would inquire as to whether the case law might provide broader rights.

REP. HUENNEKENS gave a couple of examples of what had happened to him at his home west of Billings. During irrigation season the ditch rider checks up and down the ditch, and knows what is going on; but as soon as you turn the water off, people will actually build right on the ditch, he said. He thought the committee should check on this to be sure rights are not being given away. He considered this an essential bill to handle this problem.

REP. HAROLD BRIGGS, Beaverhead County stated that landowners are asked to remove the structures and they do. It has never been a problem, he said. He thought there must be a law that requires people to replace bridges, fences, etc.

CHAIRMAN ROTH asked if there are any laws to that effect.

REP. KEMMIS stated that no one has the right to encroach on an easement. The law is so written, he said.

CHAIRMAN ROTH asked if there is any required amount of land necessary to go with an easement to protect it.

MINUTES OF THE MEETING OF THE WATER COMMITTEE
February 12, 1981

CHAIRMAN AUDREY ROTH called the meeting to order at 1:00 p.m. in Room 436. All Committee Members were present as was Bob Person, Legislative Council Researcher.

HOUSE BILL 596

REPRESENTATIVE J. MELVIN WILLIAMS, sponsor of House Bill 596 stated that this bill was introduced to provide a secondary easement for entry to and maintenance of a canal; to prohibit encroachments upon or impairment of easements for canals or ditches used for irrigation or other lawful domestic or commercial purposes.

PROPONENTS

ED LENHARDT, Big Ditch Co. and High Ditch Co., Billings stated that people are building on, or close to, the irrigation ditches making it impossible to maintain the ditches in the proper manner. He feels this bill will consolidate other pieces of legislation into one statute, thus recognizing the "secondary easement." (EXHIBIT 1)

CHARLES CRANE, Executive Director, Montana Water Development Association, Butte, Montana concurred that all the cities of Montana were having the same trouble.

BILL ASHER, representing the Agricultural Preservation Association, Park County Legislative Association, Sweetgrass County Preservation Association, Stillwater County Agriculture Legislative Association stated all four groups would like to be shown in support of this bill.

PAT UNDERWOOD, Montana Farm Bureau agreed with the previous proponents and supports the bill.

ROBERT ELLIS, Chairman of the Board of the Helena Valley Irrigation District supports the bill.

REP. TED NEUMAN, District 33, Cascade County went on record as supporting this bill, stating that the problem is a serious one.

REP. HERB HUENNEKENS, Billings also went on record as in favor of this bill.

OPPONENTS

There were no opponents.

REP. KEMMIS stated that without this law that anyone with a ditch easment does have a secondary easement and the right to maintain that easement.

REP. KEMMIS stated whatever is necessary in order to maintain the ditch.

REP. CURTISS remarked that this goes back to the enabling act, where people were entitled to an easement for a ditch right-of-way. She thought it was about ten feet.

REP. MCLANE stated that her right-of-way is a little different. Her property is on a cove ditch, but their easement is 40 feet from the center of the ditch. It was included with her deeded right-of-way, she said.

CHAIRMAN ROTH stated she felt it varied with each easement.

REP. HUNNEKENS stated that a lot of the problem is with the prescriptive right, rather than the deeded easements.

ED LENHARDT stated that the deeded easements have no problems because the law is specific in that regard. In some cases, land belongs to a ditch company. This law refers to the prescriptive rights of ditches or secondary easement, he said.

The DO PASS motion was seconded and passed UNANIMOUSLY.

REP. WILLIAMS thanked the committee, stating that this bill was not an attempt to take rights away from anyone. The sponsors were just trying to prescribe specific rights for those people who find themselves involved in the irrigation canal situation.

REP. NEUMAN asked if it would take very long for REP. KEMMIS to check this thing out with Dr. Stone.

REP. KEMMIS said he would do it as quickly as he could.

REP. NEUMAN stated that if there were any problems, he just as soon consider them in committee before it gets to the floor.

CHAIRMAN ROTH told the committee that House Bill 596 would be held for a few days.

HOUSE BILL 551

REP. KEMMIS reported he is in the process of working out some amendments to HB 551, and would like another day or two for completion.

CHAIRMAN ROTH commented that it is necessary for the committee to move these bills out of committee as soon as possible.

A discussion of what bills were still in committee was made.

The reasoning behind this bill has been brought on by what I would call progress in our State over many years.

A very large percentage of our canals and ditches in Montana were constructed in the 1880's and early 1900's. I would suspect that very few of them were constructed on deeded right-of-ways. Therefore, we have been operating these canals and ditches on a right-of-way by prescription or conveyance.

Now we are in an era of urban sprawl. One can find single unit housing or full fledged subdivisions in all of our irrigated valleys.

In a good deal of these parcels of land sales both the real estate sales person and the buyer are unaware of where the ditches go; or what purpose they serve; or what type of equipment it takes to maintain a particular ditch. In many cases the new owners will build fences, houses, garages, bridges, or plant trees and shrubs too close to the water's edge. This would prevent The Ditch Co., farmers, and other users from using whatever modern day equipment it takes to maintain the ditch in a reasonable manner.

This is very important since we are bound by law to control and use this water in these canals and ditches. The Ditch Co. can be held liable if we run water on an innocent party due to negligent care or maintenance of a canal or ditch.

I firmly believe that unless we get a statute in this regard passed, our entire irrigation systems in the State of Montana will deteriorate to serious proportions within a few years.

I believe this bill states in a very simple explanation the requisites needed to maintain and operate a ditch or canal in a normal efficient method.

Water, becoming a more precious resource each day, should be used and protected.

It is the obligation and responsibility of the ditch or canal owners and agents to maintain these waterways in a fashion not to restrict the free flow of waters.

There are bits and pieces of past legislation in our statutes pertaining to this subject. This bill would consolidate these "bits and pieces" into one statute pertaining to "canals and ditches" which have no deeded right of way as such, by recognizing the "secondary easement".

NAME BILL ALLEN BILL No. HB 596
ADDRESS MANHATTAN DATE FEB 12, 1981
WHOM DO YOU REPRESENT SEE BELOW
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

REPRESENTING: AGRICULTURAL PRESERVATION ASSOCIATION

PARK COUNTY LEGISLATIVE ASSOCIATION

SUGARCREEK COUNTY PRESERVATION ASSOCIATION

STILLWATER COUNTY AGRICULTURAL LEGISLATIVE ASSOCIATION

NAME: PAT Underwood DATE: FEB 12, 1981

ADDRESS: Box 1207 Bozeman, MT. 59715

PHONE: 587-3153

REPRESENTING WHOM? MONTANA Farm Bureau

APPEARING ON WHICH PROPOSAL: SB 596

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: The Montana Farm Bureau supports
Senate Bill 596 and HEREBY goes on
record with affirmative support. We
recommend you give this Bill a "do
Pass" vote!

Pat Underwood

COMMITTEE

Date 2-12-81

[illegible]

Form CS-33
1-81

alternate while still retaining value in another way.

Senator Eck asked Representative Donaldson how they would make the easement calculation. Donaldson said this would be negotiated between the land owner and the soil conservation district.

Senator Eck said they could already grant this kind of easement to non profit organizations. Donaldson said they are talking about using the land as agricultural acreage as opposed to open space, a viable agricultural operation. They can still farm around it if there is an oil well or pipe line going through it. They are not doing anything like the open space thing. That is why there is no objection to the utility companies, as long as it does not interrupt the agricultural process.

Senator Aklestad asked if the power company has to give you an easement. Donaldson said the easement has to be granted to the surface owner.

Aklestad asked who comes up with the extra money. Donaldson said the conservation district.

Senator Kolstad suggested Representative Donaldson work with Mr. Allen on the mineral right portion of the bill.

In closing, Representative Donaldson felt Mr. Jackson was looking for sharks in the goldfish bowl. Conservation districts are very credible and he felt it is an issue we have to face. This bill offers some opportunities that some people can use to maintain their lands in agricultural pursuits. He said he would work with Mr. Allen on any changes he feels might be needed.

CONSIDERATION OF HB 596: Representative Melvin Williams, HD 70, said this legislation is necessary because of the conditions that have developed concerning irrigation ditches and canals. People have built homes, porches, fences, etc., across and near the ditches and conservation and irrigation districts have been forced to go to court to maintain the easements for these canals. Statement attached.

Ed Lenhart, Billings, President of the Ditch Board, lives on two ditches that have problems. The problems began on the canals and ditches. Most are running on the right or prescription where the land owner owns the ditch right. He showed the Committee pictures of culverts, fences, etc., and flooding and access problems to the ditches. Statement attached.

Charlie Crane, MWDA, rose in support. He said this is a problem you find not only in Billings. This is happening all around the State. Anywhere there is a ditch, people are building. This bill simply puts in black and white that the ditch people can recover costs.

R. A. Ellis, WDA, said there are 139 miles of canals and lateral ditches in the Helena valley. There is a surge of development, and they are faced with problems. The Bureau of Reclamation bought easements and have to take each problem to task. He would

Senate Agriculture Committee
3/11/81

like to see this bill passed.

Pat Underwood, Montana Farm Bureau, was in full support.

There were no opponents.

Representative Williams said they were concerned that they do not interfere with any rights. It will strengthen the current law. When people know there is a law, they will be staying away from the ditches. He urged a do pass.

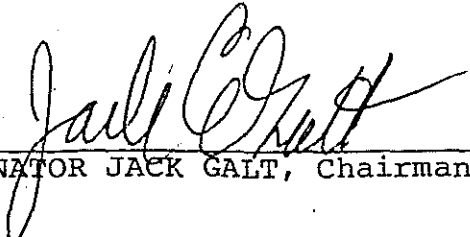
Mr. Ellis told Senator Galt that you need a road wide enough to get a back hoe or drag line down to keep the ditches and canals cleaned out and free of debree.

All the early ditches are prescription ditches and do not have easements.

The hearing on HB 596 was closed.

Senator Kolstad set Thursday, March 12, at 2:00, Room 415, as meeting time to work on HB 488. He asked Senators Aklestad, Graham, Conover; Representative Jacobsen; Gordon McOmber, Department of Agriculture; Bob Stephens, Montana Grain Growers; and Anne Brodsky, Legislative Council, to be present.

There being no further business, the meeting was adjourned.



SENATOR JACK GALT, Chairman

47 th LEGISLATIVE SESSION - - 1981

Date 3-11-81

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	/		
KOLSTAD, Allen C.	/		
AKLESTAD, Gary C.	/		
OCHSNER, J. Donald	/		
GRAHAM, Carroll			
BOYLAN, Paul F.	/		
CONOVER, Max	/		
ECK, Dorothy	/		
LEE, Gary	/		

Each day attach to minutes.

The reasoning behind this bill has been brought on by what I would call progress in our State over many years.

A very large percentage of our canals and ditches in Montana were constructed in the 1880's and early 1900's. I would suspect that very few of them were constructed on deeded right-of-ways. Therefore, we have been operating these canals and ditches on a right-of-way by prescription or conveyance.

Now we are in an era of urban sprawl. One can find single unit housing or full fledged subdivisions in all of our irrigated valleys.

In a good deal of these parcels of land sales both the real estate sales person and the buyer are unaware of where the ditches go; or what purpose they serve; or what type of equipment it takes to maintain a particular ditch. In many cases the new owners will build fences, houses, garages, bridges, or plant trees and shrubs too close to the water's edge. This would prevent The Ditch Co., farmers, and other users from using whatever modern day equipment it takes to maintain the ditch in a reasonable manner.

This is very important since we are bound by law to control and use this water in these canals and ditches. The Ditch Co. can be held liable if we run water on an innocent party due to negligent care or maintenance of a canal or ditch.

I firmly believe that unless we get a statute in this regard passed, our entire irrigation systems in the State of Montana will deteriorate to serious proportions within a few years.

Mr. Chairman I Move etc.

Mr. Chairman & Members of the Comm.
HB- 596 is an Act - Read Title &
Section 1 Sub-Sect 1 & 2

This legislation is necessary
because of conditions that have ^{developed} ~~prevailed~~
due to urban and rural developments
in Agricultural Areas or Areas that
were at one time or are still Irri-
gated Agricultural Lands

Homes, bridges, fences and other
structures have been ~~built~~ ^{built} on or too
close to irrigation canals and later
irrigation and waste water ditches.

The farmers who use these
ditches which are very necessary to
their farm operations have run into
difficulty in maintaining these canals
and related systems because of interference
on the canal right-of-ways.

They have been forced to go to
court to gain access to maintain the
canals and ditches.

Read Sub-Sect. 3, 4 & 5

This legislation strengthens the current easement laws and serves to prohibit encroachment and provides cost and reasonable attorneys fees to the prevailing party if legal action is necessary.

#

Close

HB 717 + 596

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOS
Po. Timberwood	MT. Farm Bureau	540 + HSR 16	✓	
Bill Ashor	APA, PCA, SCPA & SCALA	HB 777 HSR 16	✓	✓
Charlie Craver	MWD-4	HB 596	✓	
Ed Tenhaver	Big Pitch & High Pitch Camps	HB 596	✓	
Mary Griggs	MT. Dept. of Agric	HJR 16	✓	
Rep. Jerry Newlin		HJR 16	✓	
Geto Jackson	Wata	HB 777		✓
R. H. Ellis	W. D. F.	HB 596	✓	
Leonard McDaniel	Devel. Co	540 58502	✓	
Leah G. Clark	Agst Cys	SR 16	✓	
Old Welch	DNR-COD	HB 777		
By. Gannon	MT. Power	HB 777		amend
Gene Donaldson	JD 29	HB 777	✓	
John Gannon	Mont. Land Reboice	HJR 77	✓	
Jo Brunner	W. I. F. E	HSR 16	✓	
"	"	HB 777	✓	
Ann Scott	Mont Farmers Union	HJR 16	✓	
"	"	HB 777	✓	
Rory Burke	MAFI	HB 777	✓	

funds because their industry is so small. They would have 1/2 of 1% assessment on all seed sold by them to provide funds for different purposes of research and help with the marketing process.

Representative Carl Smith, HD 57, said he had the bill in the House Agriculture Committee and heard the testimony. He has raised alfalfa seed for fifty years and supports the bill.

There were no opponents.

Senator Graham was told that four million dollars worth of seed was produced in Montana in the last three years. The tax would be about \$20,000. It is 1/2 of 1% at the point of sale.

DISPOSITION OF HB 596: Senator Boylan moved to amend HB 596 to add an effective date in the title and body of the bill. Motion carried unanimously.

Senator Boylan moved HB 596, AS AMENDED, BE CONCURRED IN. Motion unanimously carried. Senator Blaylock will carry the bill on the floor.

DISPOSITION OF HB 777: Senator Kolstad moved HB 777 BE NOT CONCURRED IN.

Senator Eck felt it was a good bill and it may be put to good use.

Senator Galt questioned what would happen if, in a hundred years, there is a 100 acre plot in the middle of Billings, or what if the conservation districts went out of business.

Senator Boylan said someone would have to take care of fire districts, weeds, rodent control, etc.

Senator Kolstad reminded the Committee that this was forever. The conservation district could sell it to anyone.

Roll call vote was taken and it was 8 YES and one NO. HOUSE BILL 777 WILL RECEIVE AN ADVERSE COMMITTEE REPORT: Senator Kolstad will carry the bill on the floor.

DISPOSITION OF HB 667: Senator Graham moved HB 667 BE CONCURRED IN Motion unanimous. Senator Galt will carry the bill on the floor.

DISPOSITION OF HB 265: Senator Lee explained the amendments to HB 265. He said there was some objection that the bill was too strict. A "buffer" zone was added so that they are not running into the center of a field.

Senator Graham thought gophers were a real problem in the western part of the state and around Livingston. He felt the Committee should have passed the bill.

Senator Boylan agreed it was a problem in isolated areas.

47 th LEGISLATIVE SESSION - - 19 81

Date 3-13-81

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.	✓		
CONOVER, Max	✓		
ECK, Dorothy	✓		
LEE, Gary	✓		

Each day attach to minutes.

MR. **PRESIDENT**

We, your committee on **AGRICULTURE, LIVESTOCK AND IRRIGATION**

having had under consideration **HOUSE** Bill No. **596**

Williams (Blaylock)

Respectfully report as follows: That **HOUSE** Bill No. **596**

third copy reading (blue), be amended as follows:

1. Title, line 9.

Following: "WATER;"

Strike: "AND"

2. Title, line 11.

Following: "ACT"

Insert: "AND PROVIDING AN EFFECTIVE DATE"

3. Page 2.

Following: line 7.

Insert: "Section 2. Effective date. This act is effective on passage and approval."

~~EXEMPT~~ *W.C.*

And is amended,
BE CONCURRED IN

March 18, 1981

House Bill 596

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 596, third reading copy,
as follows:

1. Title, line 5.
Following: "CANAL"
Insert: "OR DITCH"
2. Page 1, line 16.
Following: "enter"
Strike: "and"
Insert: " , "
Following: "repair,"
Insert: "and"
3. Page 1, lines 16 and 17.
Following: "maintain"
Strike: " , or otherwise use the easement"
Insert: "a canal or ditch"
4. Page 1, lines 21 through 23.
Following: "water"
Strike: the remainder of lines 21 through 23.
5. Page 2, line 4.
Following: "section."
Insert: "Nothing in this section establishes a
secondary easement where none existed prior to
[the effective date of this act]. This section
does not affect contracts or agreements con-
cluded prior to [the effective date of this act]."